



May 28, 1999

Ms. Ann Diamond
Chief of Litigation – Civil
Assistant District Attorney
Tarrant County
401 West Belknap
Fort Worth, Texas 76196-0201

OR99-1485

Dear Ms. Diamond:

You ask that we reconsider Open Records Letter No. 99-0237 (1999). Your request for reconsideration was assigned ID# 123698.

On October 6, 1998, the Tarrant County District Attorney's Office received an open records request for information concerning the "sexual harassment investigations" of four named individuals. By letter dated October 20, 1998, you claimed that the requested information was excepted from disclosure pursuant to sections 552.101, 552.102, 552.103, 552.111, and 552.117 of the Government Code. By letter dated October 21, 1998, you submitted additional arguments to support your section 552.103 claim. Because your letter of October 20 bears a postmark of October 26, we concluded that you had not submitted your letter of October 20 within ten business days of receiving the written request for information as required by section 552.301 of the Government Code. ORL 99-0237 at 2-3. Thus, we only considered the merits of the "mandatory confidentiality provisions" you raised, and we deemed "[a]ll other exceptions to disclosure that you raised in your October 20, 1998 correspondence . . . to be waived." Because your letter of October 21 bears a postmark of October 21, we considered that correspondence to be timely submitted in accordance with section 552.301.

Section 552.308 of the Government Code states that a governmental body meets a deadline for submitting information to this office if the governmental body sends the information by first class United States mail and furnishes satisfactory proof that the information was deposited in the mail within the required time period. In your request for reconsideration, you provide a copy of "the official Postal Service hand-cancel postmark" which proves that one of your staff members mailed your letter of October 20 to this office on October 21 via United States mail. We, therefore, overturn that portion of Open Records Letter No. 99-0237 (1999), which concludes that you did not timely submit your letter of October 20 to this office. Please be assured that we did not intend to damage your reputation or the reputation

of your office with Open Records Letter No. 99-0237 (1999). We are limited in the ruling process to rendering a ruling based on the information presented before us. As a result, we may occasionally issue a ruling based on incomplete information regarding the timeliness of a request without realizing that we do not have all relevant information before us on that issue.

We have carefully reviewed the other conclusions reached in Open Records Letter No. 99-0237 (1999). We believe that the remainder of the ruling is correct and we, therefore, affirm the ruling except as noted above. We note, however, that our markings on the document flagged with a yellow tab are ambiguous. All bracketed information on this document is excepted from disclosure and should be withheld from the public. Additionally, since the ruling did not reach the merits of your arguments under sections 552.102 and 552.111 of the Government Code, we must now consider those arguments.

Section 552.102 excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Section 552.102 protects information in personnel files only if it meets the test articulated under section 552.101¹ for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref’d n.r.e.). In Open Records Letter No. 99-0237 (1999), we applied the common-law right of privacy to the documents at issue. ORL 99-0237 at 4-5. Because the standards for withholding information under section 552.102 and the common-law right to privacy are the same, we find that section 552.102 excepts from disclosure only the information that we previously ruled is protected by the common-law right to privacy under section 552.101.

Section 552.111 excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency’s policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *City of Garland v. Dallas Morning News*, 969 S.W.2d 548, 557 (Tex. App.--Dallas 1998, pet. granted) (citing *Lett v. Klein Indep. Sch. Dist.*, 917 S.W.2d 455, 457 (Tex. App.--Houston [14th Dist.] 1996), writ denied per curiam, 41 Tex. Sup. Ct. J. 575 (1998) (documents relating to problems with specific employee do not relate to making of new policy but merely implement existing policy)); ORD 615 at 5-6. Because

¹Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”

the documents at issue relate to disciplinary matters involving four employees, we conclude that the documents do not constitute advice, opinion, or recommendation on issues of policy. Therefore, the documents are not excepted from disclosure under section 552.111.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rebecca L. Payne".

Rebecca L. Payne
Chief
Open Records Division

RLP/KEH/ch

Ref: ID# 123698

Encl. Marked documents

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